

EVALUATING THE PROGRESS IN THE GLOBAL WAR ON TERRORIST FINANCING

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I. ANTI-TERRORIST FINANCING STRATEGY

More than three and one-half years following the devastating terrorist attacks of September 11, 2001, that tragically took the lives of approximately 3,000 innocent civilians, including people from over 60 foreign countries, the Bush Administration's top priority remains winning the global "war on terrorism." In a speech delivered on September 24, 2001, President George W. Bush announced that the war against terror would be an unconventional war fought on multiple fronts, including the financial front. President Bush declared:

We will direct every resource at our command to win the war against terrorists; every means of diplomacy, every tool of intelligence, every instrument of law enforcement, every financial influence. We will starve terrorists of funding, turn them against each other, rout them out of their safe hiding places, and bring them to justice.

The United States government's anti-terrorist financing strategy is preventive in nature. The goal is to prevent terrorist attacks that kill thousands of innocent people by making it more difficult for terrorist organizations like al-Qaeda to raise money and transfer it globally. Terrorist organizations need money to recruit new members, finance terror training camps, purchase small arms, mortars, rocket-propelled grenades, and weapons of mass destruction, as well as sustain terrorist cells around the world. For example, the estimated cost of the September 11th terrorist attacks was between \$300,000 and \$500,000. Cutting off terrorists' funding is an

important means of disrupting their terrorist operations.

DOMESTIC BLOCKING ACTIONS

The center piece of the United States Government's anti-terrorist financing strategy has been to freeze the assets of terrorists, as well as their financial supporters and sympathizers. The domestic authority to block terrorist funds derives from Executive Order ("E.O.") 13224 issued by President Bush on September 23, 2001. E.O. 13224 imposes economic sanctions on foreign persons and entities within the jurisdiction of the United States who commit, threaten to commit, or support acts of terrorism threatening the United States' national security, foreign policy or economy. Equally important, E.O. 13224 permits blocking the property of persons providing support to, or otherwise *associated with*, any of these designated foreign persons, and prohibits U.S. persons from doing business with those individuals. Simply stated, the intent of Executive Order 13224 is to isolate from the U.S. financial system all designated terrorists, terrorist organizations, and their financial supporters.

INTERNATIONAL BLOCKING ACTIONS

Terrorist financing networks are global, and consequently, efforts to identify, disrupt, and dismantle the financial infrastructure of terrorist organizations must also be global. Moreover, because the overwhelming bulk of terrorist assets and cash flows are located outside the United States, international alliances against terrorist financing are crucial. Recognizing the importance of international cooperation, the United States has worked diligently not only with the United Nations on blocking actions, but also through multi-lateral organizations such as the Financial Action Task Force ("FATF") and on a bilateral basis to establish protocols for combating terrorist financing.

The United Nations has played a critical role in the global strategy to starve the terrorist of funds. On September 28, 2001, the United Nations Security Council unanimously adopted Resolution 1373, requiring all member States to “freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts.” On January 16, 2002, the Security Council adopted Resolution 1390, which modifies and continues the international sanctions against the Taliban, Usama bin Laden, and al-Qaeda as set forth by United Nations Security Council Resolutions 1267 and 1333. Resolution 1267 was adopted on October 15, 1999, and targeted the Taliban by freezing its funds and other financial resources and those of any entity owned or controlled by it. On December 19, 2000, the Security Council adopted Resolution 1333, requiring member States to freeze “without delay” the funds and other financial assets of Usama bin Laden and al-Qaeda associates.

The United States has worked closely with the 1267 Sanctions Committee. For example, prior to being publically designated under E.O. 13224, the United States Treasury Department submits the names of persons and entities believed to be providing financial support to terrorists to the members of the 1267 Committee. If no Committee member objects, the names are added to the U.N. list and the assets of suspected terrorist financiers are blocked worldwide. The interaction between the Treasury Department and U.N. 1267 Sanctions Committee represents a model of international cooperation in the war on terror.

The critical question I would like to address during the balance of my remarks is whether the efforts of the United States and international community to starve terrorists of funding are being effective. In other words, has the global anti-terrorist financing strategy been successful? In my opinion, the short answer is “Yes, but only minimally.”

II.

MAJOR ACCOMPLISHMENTS

(A) FREEZING TERRORIST-RELATED FUNDS

Since September 23, 2001, 403 terrorist-related entities and individuals have been designated by the United States pursuant to Executive Order 13224, and over \$147 million in terrorist-related funds have been frozen worldwide.¹ However, most recently the number of designations has diminished. In 2005, only seven names were added to the U.S. Treasury Department list.

Since January 2004, the 1267 Sanctions Committee has added 26 individuals and 15 entities to the Consolidated List as belonging to or associated with al-Qaeda. There are currently 289 al-Qaeda related names on the List out of the total 433 entries.²

SIGNIFICANT DESIGNATIONS

The U.S. Government has been particularly effective in shutting down corrupt Islamic charities raising money in the United States to support terrorism. To date, the U.S. Treasury Department has designated 28 charitable organizations as having ties to al-Qaeda or other terrorist groups. The designated charities include the Holy Land Foundation for Relief and Development, Global Relief Foundation, Benevolence International Foundation, Revival of Islamic Heritage Society, Al Aqsa Foundation, Al Akhtar Trust, Al Haramain Islamic Foundation, and Elehssan Society.

In March 2002, the United States and Saudi Arabia jointly designated the Bosnia and

¹ See www.treas.gov/press/releases/js2426.ht (press release marking 400th designation of terrorist financiers).

² *Second Report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to Resolution 1526 (2004) concerning al-Qaeda and the Taliban and associated individuals and entities.*

Somalia branches of Al Haramain. Saudi officials estimate that at its height, Al Haramain was raising between \$40 and \$50 million per year. On January 22, 2004, the United States and Saudi Arabia jointly referred four additional branches of Al Haramain to the U.N.'s al-Qaeda and Taliban Sanctions Committee. These branches—located in Indonesia, Kenya, Tanzania, and Pakistan—had allegedly provided financial support to the al-Qaeda network and other terrorist organizations. Most recently, in June 2004, the United States and Saudi Arabia announced the designation of five additional branches of Al Haramain located in Afghanistan, Albania, Bangladesh, Ethiopia, and the Netherlands. The United States also announced the designation of Al Haramain's founder and former leader, Aqil Abdulaziz Al-Aqil.

In May 2005, the United States Treasury Department designated the Elehssan Society, including all its branches, as a charitable front for the Palestinian Islamic Jihad ("PIJ"), marking the 400th designation of a terrorist or terrorist financier. Regarding the designation, a senior-level Treasury official commented that "Elehssan masquerades as a charity, while actually helping to finance Palestinian Islamic Jihad's acts of terror against the Israeli people and other innocents."

The PIJ has been named a Foreign Terrorist Organization and a Specially Designated Global Terrorist by the U.S. Government and is also named on the European Union's list of terrorist entities. According to a fifty-three (53) count indictment filed in February 2003 in the United States District Court in the Middle District of Florida, beginning in the early 1990s, the Elehssan Society served as the fund-raising arm of the PIJ in Gaza and the West Bank, soliciting, collecting and distributing donations. According to the indictment, PIJ and Elehssan's objectives include murder, extortion, money laundering, fraud and misuse of visas.

In April 2005, the U.S. Department of the Treasury designated Bilal Mansur Al-Hiyari for providing financial support to the Abu Musab al-Zarqawi Network, an al-Qaeda-affiliated terrorist group active in the insurgency in Iraq. Al-Zarqawi, who has sworn allegiance to Usama bin Laden, is believed to be responsible for dozens of car bombings, beheadings (Daniel Pearl), and other acts of terror in Iraq. The action taken against Al-Hiyari was the third in a series of strikes by the U.S. Government to undercut the financial foundations of the Zarqawi Network. In January 2005, the Treasury Department took action against Sulayman Khalid Darwish, a Syrian man believed to be providing support to al-Zarqawi's terror network. Finally, in February 2005, moved to freeze the finances of Muhsin al-Fadhli, an al-Qaeda leader providing financial support to insurgents in Iraq.

One other significant designation is worth mentioning. On September 6, 2003, despite longstanding insistence that Hamas' "political wing" is distinct from its "military wing," the European Union added Hamas to its list of banned terrorist organizations.

(B) MAJOR ARRESTS, PROSECUTIONS AND CONVICTIONS

Since the September 11, 2001, terrorist attacks, the U.S. Department of Justice has charged 113 people under federal terrorism-financing laws, which include violations of economic sanctions. In May 2005, a federal jury in Tampa, Florida began hearing evidence against Sami Al-Arian, a University of South Florida professor and nationally known Palestinian rights activist, and three others on charges they helped fund a terrorist group that carried out suicide bombings in Israel. In a 53-count indictment, Al-Arian, and three alleged co-conspirators are accused of racketeering, conspiracy to and providing material support to terrorists. The men face life in prison if convicted of charges they used Al-Arian's think-tank

and charity as fundraising fronts for the Palestinian Islamic Jihad.

In March 2005, a Yemeni cleric and his assistant were convicted in a federal district court in Brooklyn, New York, of conspiring to funnel money to al-Qaeda and the Islamic Resistance Movement, or Hamas. Sheik Mohammed Ali Hassan Moayad, a high-ranking political leader in Yemen, was convicted of conspiracy, providing material support to Hamas and attempting to support al-Qaeda. Al-Moayad solicited funds from persons in the United States, claiming that he had provided over \$20 million to al-Qaeda. In January 2003, German officials arrested Moayad and his assistant, Mohsen Yahya Zayed, in Frankfurt, where they had traveled to receive a large donation. During the criminal investigation, Moayad was seen in a recorded video boasting that he had once tutored Usama bin Laden in Islamic law and that the al-Qaeda leader had called him “my sheik.”

Additionally, the capture in Pakistan of Mohamed Naim Noor Khan in July 2004 provided a wealth of information to assist security forces in understanding the methodology of the al-Qaeda network and related groups, as well as providing warning of possible targets.

III.

CHALLENGES AHEAD

While considerable progress has been made in combating the financing of terrorism, much work remains to be done. At the end of 2003, the General Accounting Office (“GAO”), the investigative arm of Congress, and the United Nations Security Council Monitoring Group (“Monitoring Group”), in its second required report to the U.N. 1267 Sanctions Committee, issued highly critical reports finding that al-Qaeda and other terrorist organizations continue to receive the funds needed to finance acts of terror. Most recently, the Analytical Support and

Sanctions Monitoring Team (“Monitoring Team”) established pursuant to Resolution 1526 (2004) released a report finding that a large percentage of Member States have failed to comply with the international sanctions regime established to combat terrorist financing.³

GAO REPORT

Among its many findings, the GAO reported that (1) federal authorities do not have a clear understanding of how terrorists move their financial assets; (2) some federal agencies have failed to make terrorist financing a high priority; (3) efforts to trace terrorist funds have been hindered by “turf wars” between agencies; (4) the lack of resources has hampered efforts to combat terrorist financing; and (5) the Federal Bureau of Investigation does not systematically collect and analyze information on alternative financing mechanisms used by terrorists.⁴

Alternative financing mechanisms include methods outside the mainstream financial system such as the use of commodities, bulk cash, charities, and informal banking systems to earn, move and store assets.

As United States and foreign government deterrence efforts have focused on terrorists’ use of the formal banking or mainstream financial systems, terrorists may have been forced to increase their use of various alternative financing mechanisms. The lack of a method of data collection hinders the FBI from conducting systematic analysis of trends and patterns focusing on alternative financing mechanisms. The problem is further complicated by the fact that these alternative financing mechanisms remain largely immune from State regulation.

MONITORING GROUP REPORT

³ *Second Report of the Analytical Support and Sanctions Monitoring Team* (Feb. 2005).

⁴ *Terrorist Financing – U.S. Agencies Should Systematically Assess Terrorists’ Use of Alternative Financing Mechanisms*, GAO-04-163 (November 14, 2003).

The report released by the Monitoring Group paints an equally disturbing picture, ultimately concluding that “al-Qaeda continues to have access to funds through charities, deep pocket donors, and from businesses and criminal activities, including the drug trade”⁵ to finance terrorist attacks around the world. The Monitoring Group further found that there is a lack of international cooperation to cut off funds to al-Qaeda, the Taliban, and other terrorist groups.

MONITORING TEAM REPORT

The Second Report of the Analytical Support and Sanctions Monitoring Team, appointed pursuant to Resolution 1526, submitted in February 2005, also disclosed some reasons for concern. While Security Council Resolutions 1390 (2002) and 1455 (2003) require States to submit reports on their implementation of the al-Qaeda and Taliban sanctions, approximately 30 percent of Member States (58 out of 191) have not submitted a report, and many of those States that did respond failed to include sufficient detail to permit a thorough assessment of their sanctions regimes. Moreover, of the 133 countries that have submitted reports to the United Nations, only a fraction of the reporting countries indicated that they had actually frozen terrorist assets. For example, after the United Nations added the Benevolence International Foundation, a corrupt Islamic charity, to the Consolidated List, noting more than 20 countries and regions in which it was located, other than the United States, only three Member States have reported to the United Nations that they froze assets or took other action against the organization.⁶ Likewise, while the Holy Land Foundation for Relief and Development is located in at least 24 States, only three States reported freezing assets (Azerbaijan, Bosnia and Herzegovina, and the United

⁵ *Second Report of the Monitoring Group, pursuant to Resolution 1363 (2001) and as extended by Resolutions 1390 (2002) and 1455 (2003) on Sanctions Against al-Qaeda, the Taliban and their associates and associated entities* (December 2003).

⁶ *Id.* at 57.

States).

Criticism has also been directed at the European Union. Shortly following the Madrid train bombings in March 2004, the European Union created the post of counter-terrorism coordinator to facilitate cooperation among European governments. However, critics maintain that the position lacks real power or resources, and intelligence officials in E.U. countries continue to resist sharing sensitive data.

IV. RECOMMENDATIONS

ENFORCEMENT OF THE SANCTIONS

If meaningful progress is to be realized in depriving terrorists of funding, several things must be done. First, with respect to both domestic and international economic sanctions, action must be taken to ensure that the sanctions are fully enforced. It does little good to place a name on the U.S. Treasury and U.N. 1267 Sanctions List of terrorist financiers without having some mechanism to ensure that Member States, as well as financial institutions are taking seriously their responsibility to “freeze without delay” the assets of such designated persons and entities. Simply stated, there must some way of ensuring *accountability*.

MEMBER STATES

To remedy the problem, the Analytical Support and Sanctions Monitoring Team, appointed pursuant to Resolution 1526, has recommended that the Security Council direct all States to complete and return to the Sanctions Committee a brief checklist within 60 days of its notification that a new name(s) has been added to the List. The checklist would ask States to respond in the affirmative or negative, to a variety of compliance issues with respect to the additions, including whether the State has:

(a) incorporated the name into any internal national list or registry of terrorists; (b) circulated the name to all relevant formal and informal financial institutions; (c) circulated the name to other businesses, professionals and charities; (d) located any pertinent assets (and specify the total); (e) frozen any such assets (and specify the total); (f) circulated the name to consulates, border/customs agents and all ports of entry; (g) located the person or entity within or at the borders; and (h) circulated the name to officials responsible for enforcing the arms embargo.⁷

Requiring Member States to fill out such a checklist or targeted questionnaire would ensure that States are taking reasonable and necessary steps to locate and block terrorist-related funds without burdening them with heavy reporting requirements.

Another option would be to re-institute the “name and shame” process used by the FATF to identify non-cooperating countries and territories failing to comply with international anti-money laundering standards and expand its application to non-cooperative jurisdictions on the basis of passive acquiescence to terrorist financing. However, use of the FATF blacklist process would likely be controversial and should be reserved as a last resort.

FINANCIAL INSTITUTIONS

Action should also be taken to ensure compliance by financial institutions. Senior executives of financial institutions should be required to “certify” that their employees have consulted the Treasury Department and U.N. 1267 Sanctions lists, cross-referenced the names on those lists against the names on the accounts being held by the particular financial institution, and taken the necessary steps to freeze any suspect funds. The financial institutions should further be required to report to the countries’ financial intelligence unit (“FIU”) the amount of any funds frozen by the financial institution. Additionally, domestic legislation should be enacted to punish a *willful* violation of the mandate to freeze the assets of persons and entities designated under the relevant U.N. Security Council Resolutions. The threat of the imposition of

⁷ *Id.* at 16.

a severe civil fine or criminal sanction could deter non-compliance with these important sanctions regimes.⁸

CHARITIES: REGISTRATION AND ACCOUNTING OBLIGATIONS

Several important steps should be taken to prevent the abuse of charities for terrorist purposes. First, all States should require charities to be registered or licensed. “The application to register a charity should include a charter specifying the purpose for which the charity is established, and how the day-to-day affairs of the charity will be directed.”⁹ Second, States should require an official inspection or audit of all charities that seek tax exemptions or government grants. Finally, States should consider requiring charities to report, on a confidential basis, remittances of funds abroad, specifying the amount, the name of the beneficiary, and the purpose of the donations.¹⁰

ALTERNATIVE REMITTANCE SYSTEMS

Alternative remittance systems “are systems based on trust by which money is sent from one location to another, without instantaneous movement of physical currency or financial instruments.”¹¹ A particular attraction to terrorists is that record-keeping is limited, making it difficult to reconstruct money trails in the event of an investigation. While the global total of

⁸ The President’s authority to block terrorist funds under E.O. 13224 is derived from the International Emergency Economic Powers Act (“IEEPA”). Pursuant to 50 U.S.C. § 1705(a), a civil fine not to exceed \$10,000 may be imposed on any person who violates, or attempts to violate, any license, order, or regulation issued under IEEPA. Pursuant to 50 U.S.C. § 1705(b), whoever *willfully* violates any license, order, or regulation issued under IEEPA, shall, upon conviction, be fined not more than \$50,000 or imprisoned for not more than 10 years, or both.

⁹ *Second Report of the Analytical Support and Sanctions Monitoring Team Concerning Al-Qaeda and the Taliban* (Feb. 2005), at 27.

¹⁰ *Id.* at 29.

¹¹ *Id.* at 24.

workers' remittances is estimated in the tens of billions of dollars annually, alternative remittance systems remain largely unregulated. At the very least, States not prepared to ban alternative remittance systems should be encouraged to register and license them, with prosecution available for all unregistered or unlicensed operators. Additionally, as recommended by the Monitoring Group, States should require operators of registered remittance systems to meet the same "know your customer" requirements as the formal banking sector, including the duty to report suspicious transactions. Finally, States should be required to close down alternative remittance mechanisms, such as hawalas, that fail to maintain adequate customer and transaction records. Under the USA Patriot Act, operators of informal remittance systems are required to register with the Financial Crimes Enforcement Network ("FinCEN"), as well as report suspicious transactions.

ENHANCING INTERAGENCY COORDINATION AND INFORMATION SHARING

To prevent transfer of terrorist funds globally, interagency coordination and information sharing must be enhanced. In the United States, anti-terrorist financing investigative responsibilities are shared with the FBI, Immigration and Customs Enforcement, U.S. Secret Service, Internal Revenue Service Criminal Investigations Division, Drug Enforcement Agency, and the FinCEN. However, no one person has been delegated the authority to direct terrorist financing investigations and intelligence collection across all of these law enforcement agencies. To remedy the problem, someone should be appointed as the person responsible for overseeing the U.S. Government's anti-terrorist financing efforts, such as a "Anti-Terrorist Financing Czar," or Special Assistant to the President on Combating Terrorist Financing.¹² This person must have

¹² See *Report of the Independent Task Force on Terrorist Financing, Sponsored by the Council on Foreign Relations* (Oct. 2002).

the authority to identify priorities, direct investigations, and allocate the necessary interagency resources to combat terrorist financing.

V. CONCLUSION

Although important progress has been made to deprive terrorists of funding, al-Qaeda and other terrorist organizations have ready access to financial resources. In order to successfully disrupt terrorist financing efforts, the international community must address the “accountability gap” with respect to enforcement of economic sanctions. At the very least, member States as well as financial institutions should be required to certify that they have taken the necessary steps to ensure that terrorist-related funds are frozen. Additionally, financial institutions that willfully violate the mandate to freeze the assets of persons and entities designated by the U.N. should be subject to imposition of a severe fine or possible criminal sanctions.

As the international economic sanctions regimes have made it more difficult for terrorists to transfer money globally through the traditional banking system, terrorists have resorted to the use of alternative financing mechanisms such as hawalas and charities. Member States should require these alternative financing mechanisms to be registered and licensed, and subjected to reasonable audit and reporting procedures to ensure greater transparency.